At common law the court would not try the truth of a return to an alternative writ upon affidavits. *Universal Church* v. *Columbia Township*, 6 Oh. St. 446. See *Manaton's Case*, T. Raym. 365. The remedy of the prosecutor was by an action on the case for false return or, if the rights of the public were involved, by criminal information. *State* v. *Wilmington Bridge Co.*, 3 Harr. (Del.) 540. See TAPPING, MANDAMUS, 383. The statute of Anne made the return traversable in cases involving municipal corporations. 9 ANNE, c. 20. A later enactment extended the same rule to all cases for mandamus. 1 WILL. IV. c. 21. The pleadings in mandamus became substantially like those in ordinary actions at law. See *King* v. *Mayor and Aldermen of London*, 3 Barn. & Ad. 255, 280. The statute of Anne or similar legislation forms a component part of the law of most of the United States. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 457 *et seq.* Even where the statute of Anne has not been recognized it has sometimes been held that the modern development of the writ of mandamus and the policy of our law against multiplicity of suits justify an overturning of the dilatory and cumbersome rule of the common law. *Fitzhugh* v. *Custer*, 4 Tex. 391. The principal case, however, is supported by prior decisions in Delaware and by the weight of early authority elsewhere. *McCoy* v. *State*, 2 Marv. (Del.) 543, 36 Atl. 81; *Dane* v. *Derby*, 54 Me. 95; *Police Board* v. *Grant*, 17 Miss. 77.

MASTER AND SERVANT — ESTOPPEL — LIABILITY FOR TORT OF DEFENDANT REPRESENTING ITSELF AS EMPLOYER. — The defendant corporation turned over a mine which it had operated to its president. A miner employed after the transfer was injured. He brought suit against the defendant, reasonably believing it his employer. *Held*, that the corporation is liable. *Ward* v. *Liverpool Salt and Coal Co.*, 92 S. E. 92 (W. Va.).

Where the relation of master and servant does not exist in fact, there can be no liability predicated upon that relation unless the defendant is estopped to deny its existence. Estoppel must be taken to be the basis of the court's holding, although the precise term does not appear. See *Solomon R. Co.* v. *Jones*, 30 Kan. 601, 2 Pac. 657. Estoppel raises the question whether the plaintiff acted upon the representation. See BIGELOW, ESTOPPEL, 5 ed., 570 *et seq.* It apparently was a matter of indifference to the plaintiff who his employer was. On the other hand, the expenses of litigation have been held enough to raise an estoppel. *Meister* v. *Birney*, 24 Mich. 435. This suggests the vexed question whether estoppel constitutes part of the cause of action. See EWART, ESTOPPEL, 187. If it does it would be difficult to say that the plaintiff has a cause of action at the institution of his suit, since there has been no change of position until that moment. However that may be, the better rule is that the plaintiff can recover only for the damage actually sustained. *Campbell* v. *Nichols*, 33 N. J. L. 81. *Contra*, *Meister* v. *Birney*, *supra*. See EWART, ESTOPPEL, 191 *et seq.* Under this view the most that plaintiff could recover would be costs and attorney's fees.

PATENTS — INFRINGEMENT — RESTRICTION FORBIDDING USE EXCEPT WITH ACCESSORIES OF PATENTEE'S MANUFACTURE. — Patented motion picture-projecting machines were sold with license restriction that they be used only with films of the patentee's manufacture. The defendant, a rival film concern, with notice of the restriction, leased films to users of the machines. *Held*, that such leases do not constitute contributory infringement. *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 37 Sup. Ct. Rep. 416. For a discussion of this case, see Notes, p. 298.

PAYMENT — APPLICATION — PAYMENTS ON RUNNING ACCOUNT, PART OF WHICH IS SECURED. — Plaintiffs and defendant had a running account, on which advances were charged and payments credited without distinctions.